

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, October 8, 2003, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: Robert Bartholomew
Paul Schultz
Darryl Judson

BOARD MEMBERS ABSENT: James Ward, Chairman
Walter Tarmann
Mary Voelker

SECRETARY TO THE BOARD: Amy A. Barrows

OTHERS PRESENT: Town of Merton Board of Adjustment
Mike Schoen, BA03:089, petitioner
Dennis Cerreta, BA03:090, County Architect
Ken Marx
Herman Fillinger Jr., BA03:089, neighbor
Donna Evert, BA03:086, property owner
John & Judy McBroom, BA03:088, neighbor
John Mesching, BA03:088, neighbor
Mark & Cheri Theisen, BA03:088, property owner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Judson *I move we approve the Summary of the Meeting of
September 24 , 2003.*

The motion was seconded by Mr. Schultz and carried unanimously.

The Summary of the Meeting of September 10, 2003 could not be approved since two of the three Board members present were not present at the September 10,2003 meeting.

NEW BUSINESS:

BA03:087 KAREN STIRMEL

Mr. Judson *I move we hold the hearing in abeyance until October 22,
2003 since a Public Hearing regarding the same request was
held at the Town of Eagle Town Hall this evening.*

The motion was seconded by Mr. Schultz and carried unanimously.

No information was read in the record regarding this request.

BA03:086 DONNA EVERT

Mr. Judson

I make a motion to approve this request, in accordance with the staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

- 1.) The dormers, size and location, must be constructed according to the plans submitted September 3, 2003.
- 2.) The deck and stairway on the roadside of the second story of the residence be removed and the existing doorway must be converted into a window. (The deck and stairway are located entirely within the platted road right-of-way.)
- 3.) A complete set of floor plans for the entire residence must be submitted to our Department, prior to the issuance of any permits. The floor plans must include the intended use of each room. The residence must be used as a single-family residence only and will be determined by a site inspection with the Town of Summit Building Inspector and a staff member from Waukesha County Parks and Land Use, prior to the issuance of any permits.
- 4.) Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
- 5.) Since the property consists of two lots, (Lots 10 and 11 of William Jones Silver Lake Subdivision), and are not legally combined, they must be combined by a Certified Survey Map. The Certified Survey Map will need to be approved by the Town of Summit and the Planning and Zoning Division staff, and recorded in the Waukesha County Register of Deed's office, prior to the issuance of a Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The petitioner's proposal, with the recommended conditions, is a reasonable request. The addition of dormers allows the petitioner to better utilize an existing residence with low ceiling heights on the second floor. The residence is extremely non-conforming to the road setback, however, the proposal does not increase the non-conformity of the structure, in fact, as conditioned, slightly decreases the non-conformity of the structure. The petitioner's request will not have a negative impact on the surrounding area since the increase in floor area and enlargement to the existing structure is extremely minimal and does not encroach on any setbacks further than the existing residence.

Therefore, the petitioner's request is within the spirit and intent of the Ordinance.

BA03:089 MICHAEL SCHOEN

Mr. Schultz

I make a motion to approve this request, in accordance with the staff's recommendation, with several modifications to the conditions and reasons stated in the Staff Report: (The modified portions of the conditions and reasons are identified in bold.)

- 1.) *The deck and hot tub must not be located any closer to the 100-yr. floodplain than the existing raised deck on the lakeside of the residence **unless the deck is greater than 25 ft. from the 100-yr. floodplain and meets the setback averaging provisions**, or an additional Variance is required. The deck must not be located any closer than 6.6 ft. to the west lot line and the hot tub must not be located any closer than 11 ft. to the west lot line.*
- 2.) *Prior to the issuance of a Zoning Permit, **a field verified stake-out "Map of Lands"**, showing the location of the residence, detached garage, retaining walls and all existing and proposed decks including any appurtenances including stairway, in compliance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.*
- 3.) *The deck and extensive stone area directly adjacent to the shoreline must be removed and the area restored with a natural vegetative buffer **unless the deck and extensive stone area are shown previously on Landscaping Plans and/or a Map of Lands approved by Waukesha County Department of Parks and Land Use**. If necessary, the deck removal and restoration should not be done until May-June 2004, and must be accomplished by July 30, 2004. A Landscaping Plan must be submitted and reviewed and approved by Waukesha County Department of Parks and Land Use prior to the commencement of restoration activities. The Landscaping Plan must include a timetable for completion, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch and an erosion and sediment control plan.*
- 4.) *The petitioner must submit a detailed plan of the retaining walls including the top of wall and bottom of wall elevation of each of the walls, **unless the retaining walls are shown previously on Landscaping Plans and/or a Map of Lands approved by Waukesha County Department of Parks and Land Use, and if shown on previously approved plans, this condition shall be exempt**. The petitioner must have an Engineer statement stating the walls are necessary for erosion control and no other structural methods could be used in lieu of the walls. The Engineer shall consider and comment on the soils and slopes in the immediate area. The statement must be reviewed and approved by Waukesha County Department of Parks and Land Use. If the walls are deemed necessary for erosion control by the Waukesha County Department of Parks and Land Use, they must be screened with vegetation. The Vegetation Plan to screen the walls shall be included in the above-mentioned Landscaping Plan. If the retaining walls are not deemed necessary for erosion control by the Waukesha County Department of Parks and Land Use, the retaining walls must be removed and the area restored.*

- 5.) *Since several previous Board of Adjustment approvals have been issued and the same petitioner has violated the approvals by constructing beyond the terms of approval and the current request is due to after-the-fact construction, the violation should be referred to Waukesha County Corporation Counsel for appropriate fines as deemed necessary by Waukesha County Department of Parks and Land Use.*

REASONS:

Approval of the requested Variance, with the recommended conditions, allows the petitioner reasonable use of the property while maintaining the spirit and intent of the Ordinance. The Board of Adjustment has already established that the location of the residence and existing deck on the lakeside are reasonable and appropriate in their locations. The deck and hot tub as approved, not located any closer to the 100-yr. floodplain than the existing deck and not exceeding the shore setback averaging provisions, should not cause additional negative impacts to the natural resources in the area or the surrounding properties. In fact, as conditioned, the natural resources in the area shall improve due to additional vegetation near the shoreline. **Past information was provided by the homeowner and the owner believes that when the project was previously permitted to remodel the residence in 1998, landscape plans were provided at that time and the retaining walls were shown. If the plans are on file, all structures shown on the plans shall be allowed to remain.**

The motion was seconded by Mr. Judson and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

- 1.) The deck and hot tub must not be located any closer to the 100-yr. floodplain than the existing raised deck on the lakeside of the residence or an additional Variance is required. The deck must not be located any closer than 6.6 ft. to the west lot line and the hot tub must not be located any closer than 11 ft. to the west lot line.
- 2.) Prior to the issuance of a Zoning Permit, a stake-out Plat-of-Survey, not a "Map of Lands", showing the location of the residence, detached garage, retaining walls and all existing and proposed decks including any appurtenances including stairway, in compliance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
- 3.) The deck and extensive stone area directly adjacent to the shoreline must be removed and the area restored with a natural vegetative buffer. The deck removal and restoration should not be done until May-June 2004, and must be accomplished by July 30, 2004. A Landscaping Plan must be submitted and reviewed and approved by Waukesha County Department of Parks and Land Use prior to the commencement of restoration activities. The Landscaping Plan must include a timetable for completion, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch and an erosion and sediment control plan.
- 4.) The petitioner must submit a detailed plan of the retaining walls including the top of wall and bottom of wall elevation of each of the walls. The petitioner must have an Engineer statement stating the walls are necessary for erosion control and no other structural methods could be used in lieu of the walls. The Engineer shall consider and comment on the soils and

slopes in the immediate area. The statement must be reviewed and approved by Waukesha County Department of Parks and Land Use. If the walls are deemed necessary for erosion control by the Waukesha County Department of Parks and Land Use, they must be screened with vegetation. The Vegetation Plan to screen the walls shall be included in the above-mentioned Landscaping Plan. If the retaining walls are not deemed necessary for erosion control by the Waukesha County Department of Parks and Land Use, the retaining walls must be removed and the area restored.

- 5.) Since several previous Board of Adjustment approvals have been issued and the same petitioner has violated the approvals by constructing beyond the terms of approval and the current request is due to after-the-fact construction, the violation should be referred to Waukesha County Corporation Counsel for appropriate fines as deemed necessary by Waukesha County Department of Parks and Land Use.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the requested Variance, with the recommended conditions, allows the petitioner reasonable use of the property while maintaining the spirit and intent of the Ordinance. The Board of Adjustment has already established that the location of the residence and existing deck on the lakeside are reasonable and appropriate in their locations. The deck and hot tub as approved, not located any closer to the 100-yr. floodplain than the existing deck and not exceeding the shore setback averaging provisions, should not cause additional negative impacts to the natural resources in the area or the surrounding properties. In fact, as conditioned, the natural resources in the area shall improve due to additional vegetation near the shoreline.

BA03:090 WAUKESHA COUNTY DEPT. OF PUBLIC WORKS

Mr. Judson

I make a motion to approve this request, in accordance with the staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

- 1.) All conditions of the Department of Transportation, Bureau of Aeronautics, letter dated September 17, 2003, and the conditions of the Waukesha County Airport Commission's recommendation letter dated October 8, 2003, shall be met.
- 2.) This Variance is only valid until the construction of the jail addition is complete.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The proposal, as requested and conditioned, will not have a negative impact on the safety or operation of the Waukesha County Airport and its aircraft. The need for a Variance is temporary and necessary for the proposed project to be completed. As conditioned, necessary actions will be taken to ensure the cranes exceed the height requirements only when necessary and when the cranes

do exceed the height requirements, the Waukesha Air Traffic Control Tower will be notified. Therefore, the proposal is within the spirit and intent of the Airport Height Limitation Ordinance.

BA03:088 MARK THEISEN

Mr. Schultz

I make a motion to deny this request, in accordance with the staff's recommendation for the reasons stated in the Staff Report.

The motion was seconded by Mr. Judson and carried unanimously.

The staff's recommendation was for denial for the following reasons:

- 1.) It has not been demonstrated, as required for a Variance, that denial of the requested Variances for a new single-family residence would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation, where, in the absence of a Variance, no reasonable use can be made of the property. The petitioner has a large parcel, whereas a reasonably sized residence could be constructed to conform to all Ordinance requirements. It would not be within the spirit and intent of the Ordinance to allow a Variance, simply because of a specific house design proposed by the petitioner, when a different design could fit on the property that meets all Ordinance requirements. Allowing the petitioner closer to the shore and 100-yr. floodplain than required sets a precedent to allow adjacent properties closer to the same setbacks by using the averaging formula. The intent is to encourage conformity and not create more non-conformity.
- 2.) There are not unique physical conditions existing on the property, which are not self-created, and which prevent compliance with the Ordinance. The physical limitations of the property, and not the personal circumstances or desires of the property owner, are the basis for this test. There is an approximate 75 ft. x 290 ft. building envelope on the property, which would accommodate a conforming residence. The majority of this area is clearly buildable and may require some tree removal and additional grading and/or drainage to ensure drainage does not negatively impact the subject residence and neighboring residences. The petitioner has not provided evidence that this could not be done.
- 3.) The granting of the Variance would adversely affect the general public interest/welfare and the natural resources in the area. It may not appear that allowing a structure to be constructed a few feet within the setback requirements would be detrimental to the surrounding area or natural resources, however, when cumulative effects are considered, permitting this approval would only encourage other property owners to encroach on the setbacks when not necessary. Currently, the surrounding residences appear to be greater than 75 ft. from the shoreline and 100-yr. floodplain and the proposal would not be consistent with surrounding development and in fact would only set a standard for a reduced required setback for the surrounding properties, which is only the intent when necessary to obtain reasonable use of the property.

Therefore, the approval of this request would not be within the spirit and intent of the Ordinance. A residence could be constructed further from the shoreline and 100-year floodplain, which would conform to all Ordinance requirements. Rather than perpetuating the existence of a non-

conformity, the petitioner could eliminate the non-conforming status of the property if the residence were re-designed and/or slightly re-located.

OTHER ITEMS REQUIRING BOARD ACTION:

ADJOURNMENT:

Mr. Judson

I move we adjourn this meeting at 8:44 p.m.

The motion was seconded by Mr. Schultz and carried unanimously.

Respectfully submitted,

Amy A. Barrows
Secretary, Board of Adjustment